

SERVED: July 7, 2005

NTSB Order No. EA-5168

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Issued under delegated authority (49 C.F.R. 800.24)  
on the 7th day of July, 2005

_____	)	
MARION C. BLAKEY,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-16843
v.	)	
	)	
JOSEPH L. WESLEY,	)	
	)	
Respondent.	)	
_____	)	

**ORDER DENYING STAY**

Respondent has filed a motion to stay, pending his judicial appeal, the effectiveness of NTSB Order No. EA-5142 and our denial of reconsideration of that order in EA-5163, in which we affirmed the 180-day suspension of respondent's pilot certificate. We found that respondent acted as pilot-in-command (PIC) of a passenger-carrying Sabreliner jet aircraft without complying with regulatory requirements. Specifically, to be PIC of this aircraft requires proficiency checks and requires a type rating in the aircraft. Respondent had neither.<sup>1</sup>

The Board's policy with respect to stays of orders pending judicial appeals was summarized in Administrator v. Todd, NTSB Order No. EA-4399 (1995), in which we denied a request for stay

<sup>1</sup> The regulations the Administrator claimed, and we found, had been violated were 14 C.F.R. 61.3(a), 61.13(a), 61.58(a)(1), and 91.13(a).

of a 180-day suspension:

We generally grant a stay when a suspension of less than six months [180 days] is affirmed, and consistently deny stays in cases involving certificate revocation because revocation incorporates a conclusion that an airman lacks the qualifications required of a certificate holder. Cases involving suspensions of six months or more are evaluated on a case-by-case basis, considering the seriousness of the violations.

See also, Administrator v. Powell, NTSB Order No. EA-4328 (1995); and Administrator v. Auburn Flying Service, 5 NTSB 587 (1985), in which requests for stays of 180-day suspensions were also denied.<sup>2</sup>

Respondent operated as PIC on four passenger-carrying flights when he did not hold the required type rating and did not have the required proficiency checks. Further, although respondent asserts that this incident was the result of "an innocent mistake," the Board noted in Order No. EA-5142, at p. 6, that the law judge found respondent deliberately chose to operate the aircraft as PIC.<sup>3</sup> Thus, the seriousness of the violations in this case counsel against a stay.

**ACCORDINGLY, IT IS ORDERED THAT:**

Respondent's request of a stay of the 180-day suspension affirmed in NTSB Order No. EA-5142 is denied.

Ronald S. Battocchi  
General Counsel

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<sup>2</sup> Respondent has cited no case in which we granted a stay of a suspension of 180 days or more.

<sup>3</sup> The law judge stated, "[h]e knew what he was doing. He was determined to do it." (Transcript, at p. 200.)